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ATTORNEYS FOR BRENT G. SCHLOTTHAUER AND VASSEUR & SCHLOTTHAUER, PLLC

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

* * * * *

**AFFORDABLE HOMES, INC., GARY
BRIGGS, and DILLON HOTEL GROUP,
LLC,**

Plaintiffs,

-vs-

**MATTHEW T. KING, JANET F. KING,
SHERIDAN FAMILY TRUST, MICHAEL
SHERIDAN and DEBRA SHERIDAN,
individually and as trustee of the
Sheridan Family Trust, THE JEHU
ORGANIZATION, DAVID KLINGBEIL,
SR., individually and as trustee of the
Jehu Organization, DBI INVESTMENTS,
LLC, BRENT GEROLD
SCHLOTTHAUER, VASSEUR &
SCHLOTTHAUER, PLLC, MATTHEW H.
KING, ALEX KING, and JOHN DOES I
through X,**

Defendants.

CASE NO. 07-60783

ADVERSARY PROCEEDING NO. 07-00090

**BRENT G. SCHLOTTHAUER AND VASSEUR &
SCHLOTTHAUER, PLLC'S COMBINED MOTION
FOR PARTIAL SUMMARY JUDGMENT AGAINST
DILLON HOTEL GROUP, LLC**

If you object to the motion you must file a
written responsive pleading and request a
hearing within ten (10) days of the date of the
motion. The responding party shall schedule the
hearing on the motion at least twenty (20) days
after the date of the response and request for
hearing and shall include in the caption of the
responsive pleading the date, time and location
of the hearing by inserting in the caption the
following:

NOTICE OF HEARING

Date: _____

Time: _____

Location: _____

DBI INVESTMENTS, LLC,

Cross Claimant and Third
Party Plaintiffs,

-vs-

**BRENT GEROLD SCHLOTTHAUER,
VASSEUR & SCHLOTTHAUER, PLLC,**

Cross and Third Party
Defendants.

MATTHEW T. KING AND JANET KING,

Counterplaintiffs/Defendants,

-vs-

**AFFORDABLE HOMES, INC., and GARY
BRIGGS,**

Plaintiffs/Counterdefendants.

Brent G. Schlotthauer ("Mr. Schlotthauer") and Vasseur & Schlotthauer, PLLC ("V&S"), by and through their attorney of record, Michael F. McMahon, hereby respectfully submits their combined Motion for Partial Summary Judgment against Dillon Hotel Group, LLC ("DHG") pursuant to F.R.B.P. 7056 and Mont. LBR 7056-1(a)(1).

DHG's legal malpractice claim (Count Nine) against Mr. Schlotthauer and V&S should be dismissed since there was no attorney-client relationship between these parties relative to Mr. Schlotthauer and V&S's representation of Matthew T. King and Janet King. Under Idaho law, "[A] direct attorney-client relationship is required to exist between the plaintiff and the attorney-defendant in a legal malpractice action except in [a] narrow circumstance." *Harrigfeld v. Hancock*, 140 Idaho 134, 136, 139, 90 P.3d 884, 889 (2004). Neither Mr. Schlotthauer nor V&S represented DHG. As such, they did not owe any

loyalties or duties to DHG. Consequently, Mr. Schlotthauer and AH are entitled to judgment as a matter of law in their favor and against DHG in count Nine of its First Amended Complaint.

DHG's breach of fiduciary duty claim (Count Ten) against Mr. Schlotthauer and V&S should be dismissed since there is no allegation or showing that Mr. Schlotthauer and/or V&S assumed a fiduciary duty to DHG. See *Taylor et al. v. Maile et al.*, 142 Idaho 253, 259, 127 P.3d 156, 162 (Idaho 2005), citing, *Jones v. Runft, Leroy, Coffin, and Matthews, Chartered*, 125 Idaho 607, 613-14, 873 P.2d 861 (1994). Consequently, Mr. Schlotthauer and AH are entitled to judgment as a matter of law in their favor and against DHG in count Ten of its First Amended Complaint.

Mr. Schlotthauer and AH's motion is supported by their combined brief and their statement of uncontroverted facts and its exhibits.

Respectfully submitted this 14th day of January 2008.

HUGHES, KELLNER, SULLIVAN & ALKE, PLLP

By /s/ Michael F. McMahon
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**ATTORNEYS FOR BRENT G. SCHLOTTHAUER
AND VASSEUR & SCHLOTTHAUER, PLLC**

DECLARATION OF ELECTRONIC SERVICE

I hereby certify under penalty of perjury that to the best of my knowledge, the parties eligible to receive electronic notification from the Bankruptcy Court's ECF system have received the same.

By: /s/ Michael F. McMahon
Michael F. McMahon